IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

RP.No. 74 of 2007()

AGAINST THE JUDGEMENT/ORDER IN ARBA.39/2005 Dated 22/11/2006
.....

REVIEW PETITIONERS/APPELLANTS
----

1. THE CHIEF ENGINEER (CONSTRUCTION)
CIVIL, K.S.E.BOARD, THIRUVANANTHAPURAM.

2. THE SECRETARY, K.S.E.BOARD,
VYDHYUTHI BHAVAN, THIRUVANANTHAPURAM.

BY ADV. SRI.S.RAMESH BABU

RESPONDENTS: RESPONDENTS

M/S.HINDUSTAN CONSTRUCTION COMPANY
LTD., HINCON HOUSE, LAL BAHADUR SASTRI MARG,
VIKHORLI (WEST), MUMBAI-400 083.

BY ADV. SRI.S.VENKETASUBRAMANIA IYER(SR.)
SRI.M.RAMESH CHANDER

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 04/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B. KOSHY and M.N.KRISHNAN, JJ.

R.P.NO.74 OF 2007 IN ARB.A. No. 39 of 2005

Dated this the 4th day of June, 2007

ORDER

Koshy, J.

Late Justice S. Padmanabhan, was appointed as the sole arbitrator to settle all outstanding issues and all disputes between the claimants (respondent in the review petition) and the Kerala State Electricity Board in respect of the agreement entered into between the parties on 16.11.1993 regarding the balance work of the Lower Periyar Hydro Electro Project. He passed a speaking award after taking elaborate evidence and hearing both sides. Petition to set aside the above award filed before the District Court was dismissed by order dated 8.9.2005. The order of the District Judge is a well considered order touching all the points urged for setting aside the arbitration award. The appeal filed by the Electricity Board was dismissed by us by our judgment dated 22.11.2006. This judgment is sought to be reviewed in this petition mainly on two contentions: (i) All the points argued were not properly considered; and (ii) Even though arguments were placed with regard to the rate of

interest awarded by the arbitrator, nothing is mentioned in the judgment regarding the rate of interest.

2. As we have already stated, a very well-reasoned speaking award was passed by the arbitrator taking all the points raised by the parties. Even the review petitioner had no case that any of the points argued were not considered by the arbitrator. It is settled law that it is for the arbitrator to interpret the terms of the contract and the arbitral award can be set aside only on the grounds specifically mentioned in the Arbitration and Conciliation Act, 1996 (for short 'the Act'). In a petition for setting aside the award, the court is not sitting as a court of appeal and arbitral award cannot be interfered by the court merely because another view is also possible. The sole arbitrator has to decide the questions in dispute and a very fair award was passed by the arbitrator. We have agreed with the District Judge that no grounds are made out to set aside the well-reasoned award of the arbitrator and and arbitrator has not committed any misconduct and it also did not exceeded the jurisdiction

and the revision petitioner failed to establish any of the ingredients in section 34 of the Act to set aside the award. As held by the Supreme Court in State of Rajasthan v. New Bharat Construction Co. Ltd. (AIR 2002 SC 258), if a party fails to establish his case within the four corners of that section, the award cannot be set aside. In any event, all the points argued by the appellant before the court for setting aside the award were considered and if the petitioner feels that the reasoning is not correct, it is for the review petitioner to file an appeal. A review petition cannot be equated to an appeal proceedings or as a petition for re-hearing of the matter. No grounds are made out to review the judgment on first ground.

3. With regard to the question of interest, it is true that the learned counsel argued at the time of hearing that the rate of interest awarded was high, but, such a ground was not mentioned as a ground for setting aside the award or in the appeal memorandum. Interest was one of the matters elaborately dealt with by the arbitrator. (See: Vol.I of the arbitral award pages 281

to 330). A specific issue was framed regarding claim of interest. Claim regarding interest was pleaded in the claim statement and that was countered in the written statement filed before the arbitrator and the matter was considered. The arbitrator considered the decision of the Apex Court in State of UP v. Harish Chandra and Co. ((1999) 1 SCC 63) and various other decisions to award interest of pre-reference and pentente lite of the award despite certain conditions in the contract. In Secretary, Irrigation Department, Government of Orissa and others v. G.C.Roy (AIR 1992 SC 732) as well as in Executive Engineer, Dhankanal Minor Irrigation Division, Orissa v. N.C.Budhiraj (AIR 2000 SC 221), a Constitution Bench of the Supreme Court also upheld the power of the arbitrator for awarding interest for pre-litigation period, pendente lite period and after the award under the Arbitration Act,1940. Ssection 31 (7) (a) of the present Act specifically enables the arbitrator for awarding interest which is as follows:

> "31. Form and contents of arbitral award: xx xx xx xx
>
> (7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the

> arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made."

Contention of the review petitioner stressed before us is not that the arbitrator has no power to grant interest in this case, but, rate of interest granted is on the high side. Arbitrator has granted 18% interest on the amount from various dates. The arbitrator has granted interest after considering the question in detail. It is the contention of the contractor that they borrowed money on heavy rate of interest which is more than 24%. Here, arbitrator has granted 18% interest considering the evidence of the parties and rate of interest on commercial loans at the time of contract and award and interest liability that has to be incurred by the respondent. It is true that in some of the decisions where the arbitrator did not consider the question of interest in detail, the Hon'ble Apex Court reduced the rate of interest granted from 33 to 18% and in certain cases to 12% and 9%. It is pointed out by the counsel that in some cases award granting 18% was upheld. It is

argued by the counsel for the contractor that the arbitrator has applied its mind and awarded interest and that portion cannot be set aside or modified.

4. It is argued that rate of interest granted by the arbitrator cannot be interfered in appeal as per the stipulations in the Act unless it is wholly unconscionable or arbitrary because it is within the exclusive jurisdiction of the arbitrator to determine rate of interest payable. At the maximum, interference in the rate of interest awarded can be made only if the rate is unconscionable and against the trade practice. It is contended that at the time when the the amount was due, interest rate was very high. The contractor has borrowed money from banks and private financial institutions at very high rate. It is also stated that even subsidised house loan given by various nationalised banks interest rate is between 12% and 12.5%. The standard rate of interest of banks is 14%. For commercial loans higher rate of interest is charged by all commercial banks. It is further pointed out that Statute provides that if no interest is awarded by the

tribunal, rate of interest is 18%. Therefore, it was contended that 18% interest granted after considering the facts of the case cannot be stated to be unconscionable or arbitrary. However, taking into account the present rate of interest, total amount awarded etc. we reduce the rate of interest from 18% to 12% as awarded till the date of realisation.

With that modification in the judgment under review, this review petition is disposed of.

J.B.KOSHY
JUDGE

M.N. KRISHNAN
JUDGE

vaa

J.B. KOSHY AND
M.N.KRISHNAN, JJ.

R.P.NO.74/2007 IN
ARB.A.NO.39/2005

ORDER

Dated:4th June, 2007